

FILED/ACCEPTED

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Federal Communications Commission  
Office of the Secretary

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Northern New England Telephone Operations LLC and  
Telephone Operating Company of Vermont LLC

Petition for Waiver of Sections 54.802(a) and  
54.809(c) of the Commission's Rules

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WC 08-71  
CC Docket No. 96-45

**Petition for Waiver of Sections 54.802(a) and 54.809(c)**

Pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, Northern New England Telephone Operations LLC and Telephone Operating Company of Vermont LLC (collectively, "FairPoint") respectfully request a limited waiver of the June 30, 2008 deadline for submitting the quarterly line count data used to calculate Interstate Access Support ("IAS"), 47 C.F.R. § 54.802(a), and the annual certification necessary to receive such support, 47 C.F.R. § 54.809(c). FairPoint recently acquired the exchanges to which this IAS funding applies, and the filings in question were the first FairPoint was ever required to make under these provisions. Unfortunately, FairPoint inadvertently missed the filing date by one day, but it has taken steps to ensure that this one-time oversight does not recur. As discussed below, grant of this petition will advance the public interest by avoiding a loss of funding that could impair FairPoint's ability to invest in its network and provide affordable, high-quality services in Maine, New Hampshire, and Vermont. A waiver also would be consistent with past Commission decisions granting such relief under similar circumstances, where filings were made shortly after the deadline and caused no administrative or other hardship.

### **Background**

On January 9, 2008, the Commission approved FairPoint Communications, Inc.'s acquisition of landline operations in Maine, New Hampshire, and Vermont from various subsidiaries of Verizon Communications Inc. ("Verizon").<sup>1</sup> The parties consummated the transaction on March 31, 2008.<sup>2</sup> FairPoint now provides local exchange service, exchange access, and related services to customers in all three states. In addition, on January 25, 2008, the Wireline Competition Bureau granted FairPoint's request for a waiver of the "all-or-nothing" rule, thereby permitting it operate the acquired exchanges pursuant to price cap regulation while continuing to operate its existing exchanges pursuant to rate-of-return regulation.<sup>3</sup>

Pursuant to Commission rules, in order for a price cap local exchange carrier to receive IAS support, it must submit to the Universal Service Administrative Company ("USAC"), on the last business day of March, June, September, and December of each year, line count data showing the number of lines it serves for the period ending three months prior to the reporting date, within each price cap local exchange carrier study area.<sup>4</sup> The carrier also must file an annual certification on June 30 of each year with USAC and the Commission stating that all IAS

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<sup>1</sup> See *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and Its Subsidiaries to FairPoint Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 514 (2008) ("*FairPoint Approval Order*"). FairPoint Communications, Inc. is the parent company of Northern New England Telephone Operations LLC and Telephone Operating Company of Vermont LLC.

<sup>2</sup> See Letter to Marlene H. Dortch, Secretary, FCC, from Karen Brinkmann, Counsel to FairPoint Communications, Inc., WC Docket No. 07-22 (filed Apr. 30, 2008) (consummation notice).

<sup>3</sup> *Petition of FairPoint Communications, Inc., for Waiver of Section 61.41(b) and (c) of the Commission's Rules*, Order, 23 FCC Rcd 892 (2008).

<sup>4</sup> 47 C.F.R. § 54.802(a).

support it receives will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>5</sup>

The quarterly and annual IAS filings due on June 30, 2008 were the first that FairPoint was required to submit in connection with the acquired exchanges. FairPoint prepared and reviewed these submissions well in advance of the filing date.<sup>6</sup> Unfortunately, due to an oversight by the relevant compliance personnel, FairPoint did not submit the quarterly line-count data or the annual certification to USAC until the morning of July 1, 2008, by electronic mail. That oversight resulted from the fact that the individual charged with making the filing, who had been hired just two weeks earlier as a part of FairPoint's ongoing effort to establish its regulatory organization in the region, misunderstood the supervisor's instructions concerning the filing. On or about July 3, 2008, FairPoint notified USAC by phone of its intent to request a waiver of the June 30 filing date for both submissions, in order to avoid creating any undue hardship for USAC and to allow USAC to incorporate FairPoint's line-count data into its quarterly calculations for IAS funding. In addition, because of a misunderstanding between FairPoint and USAC, FairPoint did not submit a copy of its annual IAS certification to the Commission until July 7, 2008.<sup>7</sup>

FairPoint takes seriously all of its regulatory obligations, including applicable filing deadlines, and it thus deeply regrets the oversight that caused the late filings in this instance. FairPoint also appreciates the importance that USAC and the Commission have placed on

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<sup>5</sup> 47 C.F.R. § 54.809(c).

<sup>6</sup> FairPoint's annual IAS certification is dated and signed as of June 27, 2008.

<sup>7</sup> The relevant compliance personnel erroneously interpreted a prior communication from USAC as meaning that USAC itself had forwarded the annual certification to the Commission.

regulatory compliance in the universal service context in particular. Indeed, FairPoint's affiliates have a long history of compliance in this area, including by making timely regulatory filings. Accordingly, FairPoint has worked diligently to establish internal procedures and hire personnel to manage and oversee its regulatory compliance in connection with its acquisition of Verizon's exchanges in Northern New England. FairPoint has made significant progress in these efforts in just the few months since this transaction was consummated, and it continues to do so. In particular, FairPoint has sought to design its internal procedures to guard against missed filing dates by specifically assigning responsibility for filings to several employees to ensure their timeliness. The filing team prepares the data to be filed and provides this data and the reports, including the certification, to the Director of Cost and Access Tariffs ("the Director") for review and approval. A member of the filing team is designated by the Director as being responsible for filing the data with USAC and the Commission prior to the close of business on the specified due date.

Following the one-time oversight relating to the recent IAS submissions, FairPoint has revised its procedures to assure that the company will not miss any filing deadlines going forward, by instituting a system of checks and balances to minimize the risk of noncompliance. Prospectively, the filing team will be required to copy the Director on the electronic transmissions to USAC and to send the Director an e-mail confirming that the Commission has received the annual certification via its electronic filing system. In the event the Director is unavailable for some reason, another senior member of the filing team will be responsible for verifying that the filing is timely.

### Discussion

The Commission may waive any of its rules “for good cause shown.”<sup>8</sup> In particular, the Commission may waive a rule when the particular facts presented make strict compliance inconsistent with the public interest, taking into account considerations of hardship, equity, or more effective implementation of overall Commission policy.<sup>9</sup> A waiver therefore is appropriate where special circumstances warrant a deviation from the general rule and where such deviation will serve the public interest.<sup>10</sup> FairPoint’s requested waiver clearly satisfies this standard.

The Commission has determined that IAS is critical to ensuring that consumers in all areas have access to affordable telecommunications services and that local exchange carriers can invest in their networks in the face of dramatically lower access charges.<sup>11</sup> Accordingly, the Commission has waived the quarterly and annual filing dates to permit carriers to submit line-count data and IAS certifications after the applicable deadlines, thereby allowing them to continue to receive IAS funding.<sup>12</sup>

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<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>10</sup> *See, e.g., Northeast Cellular Tel. Co.*, 897 F.2d at 1166.

<sup>11</sup> *See, e.g., Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service*, Eleventh Report and Order, 15 FCC Rcd 12962 ¶ 32 (2000) (subsequent history omitted).

<sup>12</sup> *See, e.g., Federal-State Joint Board on Universal Service; MCI, Inc. Petitions for Waiver of Sections 54.802(a) and 54.809(c) of the Commission’s Rules*, Order, 21 FCC Rcd 14926 ¶ 8 (2006) (“*MCI IAS Waiver*”); *Federal-State Joint Board on Universal Service; Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, Order, 21 FCC Rcd 10155 ¶ 8 (2006) (“*Verizon IAS Waiver*”); *Federal-State Joint Board on Universal Service; Valor Telecommunications of Texas, Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, Order, 21 FCC Rcd 249 ¶ 8 (2006) (“*Valor IAS Waiver*”); *Federal-State Joint Board on Universal Service; Citizens Communications and Frontier Communications Petition for Waiver of Section*

This same policy consideration compels the grant of a waiver for FairPoint here.

Universal service support—and IAS funding in particular—is essential for FairPoint to invest in and maintain its network and thus to provide affordable, high-quality services to consumers in Maine, New Hampshire, and Vermont, consistent with its commitments to the public service commissions in these three states.<sup>13</sup> Absent a waiver, FairPoint would be denied approximately \$951,000 in IAS funding, resulting in a significant financial hardship on FairPoint that would dramatically impact its ability to provide service.<sup>14</sup> Moreover, the loss of approximately \$951,000 in support would be an excessive penalty for the submission of a filing to USAC one day after the deadline. In short, strict enforcement of the filing deadline in this case would disadvantage FairPoint and, consequently, harm the very consumers intended to benefit from the federal high-cost universal service program.

A waiver under the circumstances presented here also is consistent with past Commission rulings. In recent years, the Commission has granted waivers where special or unusual circumstances caused a carrier to file either its quarterly line-count data or its annual certification shortly after the prescribed filing date, and where the carrier accordingly implemented revised procedures to ensure that its future filings would be timely. For example, the Commission granted such a waiver to Verizon where Verizon attempted to file its quarterly line-count data two business days after the deadline, following an internal reorganization of the department

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54.802(a) of the Commission's Rules, Order, 20 FCC Rcd 16761 ¶ 11 (2005) ("*Citizens/Frontier IAS Waiver*").

<sup>13</sup> See, e.g., *FairPoint Approval Order* ¶ 30 (noting FairPoint's obligations in the three states to expand and invest in its broadband network).

<sup>14</sup> See *MCI IAS Waiver* ¶¶ 7-8 (granting a waiver of sections 54.802(a) and 54.809(c) to avoid a loss of approximately \$1.5 million in IAS funding to MCI, which "could undermine [its] future ability to serve customers in [] high-cost areas").

responsible for universal service filings.<sup>15</sup> In doing so, the Commission relied on Verizon's commitment to revise its internal procedures in a manner that was substantially similar to the steps FairPoint has taken, as described above.<sup>16</sup> The Commission has granted other waivers involving comparably late filings, finding that a delay of one or two business days "did not impair the administration of" universal service.<sup>17</sup> The Commission has even granted waivers where IAS filings were made long after the deadline.<sup>18</sup>

FairPoint made its IAS filings with USAC one day late—in fact, FairPoint submitted them at 8:30 a.m. the day after the deadline. Far from reflecting a systemic problem, this oversight arose in the midst of FairPoint's efforts to build its regulatory compliance organization to manage the many additional regulatory obligations to which it became subject as a result of its acquisition of Verizon's operations in Maine, New Hampshire, and Vermont. While FairPoint regrets this inadvertent oversight, it has taken steps to ensure the timeliness of future filings, as noted above. In addition, USAC has informed FairPoint that it will incorporate FairPoint's quarterly line-count information into its third-quarter forecasts notwithstanding that it received

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<sup>15</sup> *Verizon IAS Waiver* ¶ 9.

<sup>16</sup> *Id.* ¶ 10.

<sup>17</sup> *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.809(c) of the Commission's Rules*, Order, 20 FCC Rcd 19212 ¶ 12 (2005); *see also Federal-State Joint Board on Universal Service; Southeast Telephone, Inc. Expedited Petition for Waiver of Deadlines in Sections 54.307(c)(2) and 54.802(a) of the Commission's Rules*, Order, 21 FCC Rcd 10149 ¶ 10 (2006) (finding that "no other party was prejudiced due to the late [IAS] filings, which were received the next business day following the deadline," and granting a waiver of the quarterly line-count deadline where the petitioners "implemented new procedures to ensure that future filings are timely received by USAC"); *Citizens/Frontier IAS Waiver* ¶ 9 (granting waiver for filing that was two days late).

<sup>18</sup> *See Valor IAS Waiver* ¶ 9 (granting waiver where filings were received by USAC two months after deadline).

this data one day late, indicating that the delay did not cause any hardship or administrative difficulty for USAC.

### Conclusion

For the foregoing reasons, FairPoint respectfully requests that the Commission promptly grant its petition for a waiver of sections 54.802(a) and 54.809(c) and direct USAC to accept the relevant line count information and annual certification submitted one day after the filing deadline, so that FairPoint can receive IAS support for the third quarter of 2008.

Respectfully submitted,

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